

REMARKS

The above-referenced Office Action has been carefully reviewed and reconsideration thereof is respectfully requested.

Claims 9-13 have been rejected under 35 USC 112, first paragraph, as containing subject matter that was not described in the Specification in such a way as to reasonably convey to one skilled in the art that Applicant had possession of the claimed invention. Applicant respectfully traverses this ground of rejection.

It is well settled that the drawings form part of the Specification for purposes of Section 112. It is clear that the drawings alone may provide a "written description" of an invention as required by Sec. 112. *Vas-Cath*, 935 F2d at 1565, 19 USPQ2d at 1118. (Emphasis added.) The content of the drawings may be considered in determining compliance with the written description requirement. *In re Barker*, 559 F2d, 588, 194 USPQ 470 (CCPA 1977). See Applicant's Figure 5 and the accompanying text. See Applicant's Figure 8 and the accompanying text. See Applicant's Figure 10 and the accompanying text. See Applicant's Figure 12 and the accompanying text. All cited Applicant's drawings and portions of text describe the use of a heated roll to aid in removing the sealing layer. Nowhere is there shown (or described in words) a knife structure. It is, therefore, respectfully submitted that Applicant has shown removal of the sealing layer without the use of a knife structure.

Claims 9-13 have been rejected under 35 USC 112, second paragraph, as being indefinite because of the recitation of the word "knife structure". The Examiner states that it is unclear what distinguishes a heated knife structure from a heated roll. Applicant respectfully traverses this ground of rejection.

It is clear that a patent Specification is directed to one of ordinary skill in the art. *In re Hayes Microcomputer Prods., Inc. Patent Litigation*, 982 F2d 1527, 1533, 25 USPQ2d 1241, 1245. It is respectfully submitted that one having less than ordinary skill

in the art viewing the drawing figures cited above would immediately know the difference between a knife structure and a roll structure.

Claim 15 has apparently been rejected under 35 USC 112, second paragraph, the Examiner asserting that “near” is a relative term. Applicant respectfully traverses this ground of rejection.

It is respectfully submitted that one having less than ordinary skill in the art, from inspection of Figures 1 and 4, would immediately know what “near” means and certainly would be able to distinguish “upper”, as shown by Applicant, and “bottom”, as shown by the *Tidemann et al.* reference. See the rejection of Claim 15 under 35 USC 103(a) below.

Claims 1, 2, 6, 21, and 22 have been rejected under 35 USC 102(b) as being anticipated by *Eigen et al.* ('679). Applicant respectfully traverses this ground of rejection.

As to Claim 1, that claim includes the limitation of element (b) that chemical is simultaneously added to the wells. *Eigen et al.* shows no such step. For a prior art reference to anticipate in terms of 35 USC 102, every element of the claimed invention must be identically shown in a single reference. *Diversitech v. Centruy Steps Inc.*, 7 USPQ2d 1315, 1317 (CAFC 1988). It is respectfully submitted that *Eigen et al.* fails this test, since simultaneous adding to the wells of chemical is not shown. While clearly chemical could be added simultaneously to the wells, the test is more restrictive than determining what could be done. Furthermore, Applicant's Claim 1 has been amended to more particularly point out and distinctly claim that the matrices of Applicant's invention are separated. Support for this amendment is found from inspection of Figure 1. *Eigen et al.* shows having all wells equally spaced.

As to Claim 2, that claim has been amended to add the limitation from Claim 9 that the sealing material is attached using a pressure sensitive adhesive. *Eigen et al.* use welding around each well to seal the wells.

As to Claim 6, *Eigen et al.* do not show using polystyrene.

As to Claims 21 and 22, those claims have been amended similar to Claims 1 and 2 and now contain features not shown by *Eigen et al.*, as noted above.

Claims 3-8, 16-18, 23, and 30 have been rejected under 35 USC 103(a) as being unpatentable over *Eigen et al.* ('679) in view of *Anderson*. Applicant respectfully traverses this ground of rejection and incorporates here the above remarks with respect to *Eigen et al.*

As to Claims 3-8 and 23, it is respectfully submitted that the combination of references does not render obvious the claimed dimensions and materials.

As to Claims 16, 18, and 30, the combination of references does not produce two or more matrices separated as claimed by Applicant.

The Examiner cites *In re Rose* for the proposition that a change of size is generally within the level of ordinary skill in the art. The *In re Rose* case involved a relatively small change in the size of bundled lumber and the CCPA stated that the size of an article under consideration is not ordinarily a matter of invention. In the present case, size is one important defining element over the prior art and any modification of the references to arrive at Applicant's dimensions would involve considerably more than a mere change in size.

In spite of this being the second time that an Office Action has been issued in response to the filing of an Appeal Brief and in spite of the Examiner being apprised of the omission, the Examiner still fails to address the limitation of Claim 17, namely, that the combination of references offers no indication that the contents of the chemical receiving wells can be forced to the bottom of the wells by centrifugal force created by spinning.

Claims 9-13 have been rejected under 35 USC 103(a) as being unpatentable over *Eigen et al.* ('679) in view of *Hansen et al.* Applicant respectfully traverses this ground of rejection and incorporates here the above remarks with respect to *Eigen et al.*

*Hansen et al.* disclose adhering a polypropylene film to the surface of another film for sterile protection. *Eigen et al.* very specifically point out the reasons for using

welding around their wells, at column 10, lines 17-51. Among the reasons given for welding the joining seam are that the welded seam can withstand pressures above or below atmospheric and that the bulge formed is an optical indication that the joining seam formed has provided a gas-tight seal of the relevant well. The device of *Hansen et al.* cannot provide these benefits and, therefore, there would be no motivation to combine the references. Where the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, the proposed modification would not have been obvious. See *Tec Air Inc. v. Denso Mfg. Michigan Inc.*, 192 F2d 1353, 1360, 52 USPQ2d 1298 (CAFC 1999). It is respectfully submitted that the combination of references falls squarely within this rule.

Claims 9-13 and 15 have been rejected under 35 USC 103(a) as being unpatentable over *Eigen et al.* (679), in view of *Tidemann et al.* Applicant respectfully traverses this ground of rejection and incorporates here the above remarks with respect to *Eigen et al.*

It is respectfully submitted that *Tidemann et al.* do not disclose the use of a seal, as that is defined by Applicant, but, rather, disclose a cover that may be temporarily applied to a carrier by the use of hook-and-loop fabric – hardly a “seal”. Applicant’s invention, as claimed in Claims 9 and 10 is directed to the “seal” as shown on Applicant’s Figures 3-5 and described in the accompanying text. Combining the two references does not make the cover of *Tidemann et al.* a seal. Furthermore, *Tidemann et al.* adhere their cover only to the edges of the carrier.

As to Claims 11-13, those claims are directed to specific materials not rendered obvious by the combination of the references.

As to Claim 15, that claim specifies that the holes are located near upper edges of the chemical receiving wells. The holes of *Tidemann et al.* are located at the bottom of their wells. Applying vacuum to the holes of *Tidemann et al.* would suck out the liquid in Applicant’s invention or that of *Eigen et al.* Consequently, there would be no reason to combine the references.

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S/N 09/198,018, FILED 11/23/1998

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Claim 14 has been rejected under 35 USC 103(a) as being unpatentable over *Eigen et al.* (679) in view of *Paquette et al.* Applicant respectfully traverses this ground of rejection and incorporates here the above remarks with respect to *Eigen et al.*

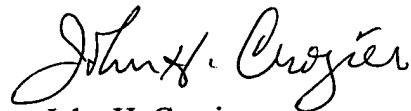
*Paquette et al.* use a heated knife structure to strip a cover from a slide plate filter. Applicant employs a heated roll as is particularly pointed out and distinctly claimed in Applicant's Claim 14. It is not seen that combining *Paquette et al.* with *Eigen et al.* renders obvious the use of a heated roll.

In view of the above amendments and remarks, it is respectfully submitted that the claims in the application, Claims 1-18, 21-23, and 30 are allowable and early action in that regard is respectfully requested.

Should the Examiner have any questions as to the allowability of the claims or have any suggestions with respect to the wording thereof, the undersigned would be grateful for the privilege of a telephone conference with the Examiner.

Date: September 12, 2003.

Respectfully submitted,



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